90-1532

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

MICHAEL SCOTT AMERSON,
JAMES CLIFFORD HORAN,
CHARLES DALE REED,

Petitioners,

vs.

THE STATE OF TEXAS,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeals For The Fourteenth Judicial District Of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether *Tex. Penal Code*, § 42.03, which makes it a Class B misdemeanor (punishable by confinement up to 180 days in jail and/or by fine up to $1,000.00) for a person who, without legal privilege or authority, intentionally, knowingly or recklessly (1) obstructs a highway, street, sidewalk, etc. to which the public or a substantial group of the public has access "or any other place used for the passage of persons, vehicles or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others", or (2) disobeys a reasonable request or order to move from a police officer, etc. to prevent obstruction of a highway or any of the areas mentioned in "(1)", above, with "obstruct" defined as meaning "to render impassable or to render passage unreasonably inconvenient or hazardous", is overbroad facially, in violation of the liberties of speech, press and association under the 1st Amendment to the U.S. Constitution, as enjoined on the States under the Due Process Clause of the 14th Amendment thereof;

2. Whether *Tex. Penal Code*, § 42.03, above, is unconstitutionally vague, in violation of the Due Process Clause of said 14th Amendment;

3. Whether Petitioners, one of whom is legally blind, convicted of the disobedience offense under § 42.03, above, during an anti-abortion protest near an abortion clinic in Houston, Texas, and free under appeal bonds from jail sentences and fines, have standing to challenge on appeal the constitutionality under the 8th Amendment to the U.S. Constitution (cruel and unusual

QUESTIONS PRESENTED – Continued

punishments provision) of execution of their jail sentences in the Harris County Jail, where the U.S. District Court for the Southern District of Texas, Houston Division, had ruled in different litigation after Petitioners were convicted and sentenced that the conditions of confinement at Harris County Jail facilities, including the Harris County Jail, were cruel and unusual in violation of the 8th and 14th Amendments to the U.S. Constitution;

4. Whether the Court of Appeals erred when it ruled that it "must reject" Petitioners' "underlying challenge" to *Roe v. Wade*, 410 U.S. 113 (1973), where such challenge underlaid Petitioners' reliance on the defense of third person under Texas statutory law; and

5. Whether *Roe* should be reconsidered and overruled for jurisdictional, constitutional and other reasons.

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OPINION BELOW

The Opinion of the Court of Appeals (Pet. App. 1-14) is reported at 794 S.W.2d 806.

JURISDICTION

The Judgments of the Court of Appeals were rendered on June 28, 1990 (Pet. App. 15-17). The Court of Appeals overruled Petitioners' timely-filed Joint Motion for Rehearing on September 6, 1990 (Pet. App. 18-23). On January 10, 1991, a Joint Petition for Discretionary Review, filed on behalf of Petitioners, was refused as to Petitioner Reed and, on January 16, 1991, was refused as to Petitioners Amerson and Horan (Pet. App. 24-25). Judge Maloney of the Court of Criminal Appeals, however, would grant the Joint Petition for Discretionary Review for each Petitioner on Question Presented for Review No. 1 (*ibid.*), i.e., on the U.S. and Texas constitutional challenge to *Tex. Penal Code*, § 42.03, on grounds of facial overbreadth. On January 24, 1991, the Court of Criminal Appeals rejected Petitioners' Joint Motion for Rehearing on behalf of each Petitioner "for failure to comply with Rule 230(b), T.R.A.P." (Pet. App. 25-27). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION:

First Amendment:

> Congress shall make no law * * * abridging the freedom of speech, or of the press * * * .

Fourteenth Amendment:

> * * * [N]or shall any State deprive any person of life, liberty, or property, without due process of law * * * .

TEXAS STATUTORY LAW:

The *Texas Penal Code* provides, in pertinent part:

§ 42.03. *Obstructing Highway or Other Passageway*

(a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1) of this subsection; or

(B) to maintain public safety by dispersing those gathered in dangerous proximaty to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

STATEMENT OF THE CASE

Following a joint trial by jury in County Criminal Court at Law No. 5 of Harris County, Texas ("Trial Court"), Petitioners were found guilty of disobeying a

reasonable request or order to move from one J.C. Linney, a person they knew or were informed to be a peace officer, etc., in order to prevent the obstruction of a sidewalk, entrance or exit to which the public or a substantial group of the public had access. The evidence showed, in part, that the alleged conduct occurred in the vicinity of the Houston Women's Clinic ("Clinic"), an abortion clinic in Houston, Harris County, Texas, which, at that time, was not licensed (under the Texas Abortion Facility Reporting and Licensing Act) (II S.F. 11, 34, 35, 61).[1] Petitioners were sentenced to jail terms and fines (180 days in jail and $1,000.00 fine for each of Petitioners Amerson and Horan; 90 days in jail and a $1,000.00 fine for Petitioner Reed), none of which was probated.[2] These sentences were in accord with jury assessments made after a punishment phase proceeding.

The pertinent facts are these:

A. *Motions To Quash 5 and 6.* Before trial, a separate DEFENDANT'S MOTION TO QUASH INFORMATION NO. 5 and a separate DEFENDANT'S MOTION TO QUASH INFORMATION NO. 6 were filed on behalf of each Petitioner (Tr. Amerson 16-22; 1st Sup. Tr. Horan 11-17; Tr. Reed 15-21). Motions To Quash 5 alleged, in part, that the Informations were defective in law because *Tex. Penal Code*, § 42.03, on which they were based, was void facially for vagueness, in violation of the liberty reach of the Due Process Clause of the 14th Amendment to the U.S. Constitution, the rights of free speech, free press and association under the 1st Amendment to the U.S. Constitution and under certain provisions of the Texas Constitution not here pertinent. Paragraphs III and IV of each such Motion alleged (e.g., Tr. Amerson 21):

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[1] "Tr." refers to the Clerk's Transcript of documentary materials. "S.F." refers to the Court Reporter's Statement of Facts or transcription of the proceedings in the Trial Court.

[2] Only Petitioner Reed applied for probation. The Jury did not recommend probation for him.

III.

Tex. Penal Code, § 42.03, (1) operates to inhibit the exercise of such free speech, free press and associational rights, (2) fails to set forth to a person of ordinary intelligence a clear standard of what is prohibited and (3) fails to provide explicit standards for enforcement of such law.

IV.

Section 42.03 does not require an obstruction of passage or movement of any person, vehicle or other conveyance; hence, violation of the obstruction provision occurs where, for example, one stands or reclines in the middle of a narrow sidewalk in an intentional, knowing or reckless manner. The "unreasonably inconvenient" part of the definition of "obstruct" in said Section is vague and subjective; hence, a law enforcement official has impermissibly broad latitude in defining an obstruction for purposes of the Section. The "reasonable request or order to move" aspect of the disobedience violation is vague and subjective, particularly when considered in the context of the impermissible latitute furnished in defining an obstruction and of the nonrequirement of an actual obstruction of passage or movement.

Motions To Quash 6 alleged, in part, that the Informations were defective in law because *Tex. penal Code*, § 42.03, on which they were based, was overbroad facially, in violation of the liberty reach of the Due Process Clause of the 14th Amendment to the U.S. Constitution, the rights of free speech, free press and association under the 1st Amendment to the U.S. Constitution and of certain provisions of the Texas Constitution not here pertinent. Each Motion 6 provided, in pertinent part (e.g., Tr. Amerson 17-18):

V.

Section 42.03 reaches within its prohibitive terms, or permits the reaching within such terms, of such speech on a public sidewalk or public street right-of-way. Section 42.03 also chills the peaceful exercise of such rights. Public streets and sidewalks are traditional public fora for the exercise of expression rights. While the exercise of such rights is subject to certain governmental control, they may not be prohibited under the sweep of a penal law.

VI.

Peaceful exercises of U.S. Constitutional rights of free speech, free press and association and of Texas Constitutional rights of free speech and free press can and do take place on or in the vicinity of the areas covered by said Section 42.03, including "a highway, street, sidewalk * * * entrance, or exit to which the public or a substantial group of the public has access * * * " [Section 42.03(a)(1)], and such exercises may entail an obstruction within one meaning of the term "obstruct", e.g., rendition of passage "unreasonably inconvenient" [Section 42.03(b)]. Likewise, the making unlawful a disobedience of a "reasonable request or order to move", etc. in order "to prevent obstruction of a highway" [Section 42.03(a)(2)(A)] implicates the peaceful exercise of such rights. Said Section does not exclude the exercises of such rights and, instead, sweeps within its ambit conduct which is protected constitutionally.

B. *Pretrial Proceedings.* A pretrial hearing was conducted on various defense motions, including Motions To Quash 5 and 6, above. Testimony from Petitioner Reed was presented on the latter Motions. He testified, in part, that on October 29, 1988, he and about 100 others "were protesting the killing of unborn babies" at the Clinic; that he was standing on a sidewalk and driveway near the

Clinic holding a banner which said something like "Stop Abortion"; that the sidewalk ran parallel to San Jacinto Street and met the driveway; that the sidewalk and San Jacinto Street were public property; that he and four others placed 3 or 4 barrels partially filled with cement "[a]long the sidewalk, in between the driveway"; that the group, of which he was part, stood, sang, prayed and held banners or signs which carried words or messages; that the group was peaceful and orderly; that the protest lasted about 1 or 1½ hours; and that 21 persons, including himself, were arrested that day (I S.F. 16-21).

After argument, the Trial Court denied Motions To Quash 5 and 6. Defense Counsel objected on behalf of all of the defendants he was representing (I S.F. 30). (See Footnote 6, *infra*.)

C. *The Trial*. 1. *The Clinic and Its Setting*. The Clinic is a "pregnancy termination" clinic located in Houston, Texas, and has been doing abortions there since 1976 (II S.F. 9-10). It has two entrances, one from a driveway off San Jacinto Street and another off Arbor Street. The Arbor Street entrance was usually locked, and was locked on October 29, 1988 (II S.F. 17). A sidewalk runs parallel to San Jacinto Street in front of the Clinic and extends into an area covered by such driveway. San Jacinto and Arbor Streets, the sidewalk along San Jacinto and the area between the sidewalk and San Jacinto Street constitute public property (II S.F. 49; III S.F. 134-135).

The Clinic was not licensed by the Texas Department of Health on October 29, 1988, the date of the protest activities (II S.F. 11, 34).[3] The Clinic was licensed by that

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[3] See The Texas Abortion Facility Reporting and Licensing Act, effective September 1, 1985, *Tex. Health & Safety Code*, §§ 245.001 *et seq.*, formerly *Vernon's Tex. Civ. Stats. Ann.* art. 4512.8 ("Act").

Department sometime in 1989 and before the trial (II S.F. 10, 61).[4]

2. *The Protest Activities.* On October 29, 1988, a number of persons (estimates varied), including Petitioners, participated in a protest activity on public property outside of the Clinic (II S.F. 49-50; III S.F. 134-135). Three 55-gallon drum barrels partially filled with concrete were placed on the sidewalk and driveway entrance off San Jacinto Street. This entrance was about 24 feet wide (III S.F. 129). Some protestors were locked to the barrels, including Horan by the neck and Amerson by his ankles (II S.F. 26-27, 51, 80, 81; III S.F. 109-110, 120-121, 185, 186, 204). Some protestors were sitting or standing across such entrance, while others were sitting shoulder-to-shoulder across the entrance to the Clinic from Arbor Street (III S.F. 109-110). The sidewalk was blocked completely, making it extremely difficult for people to get in, and vehicles could not enter (III S.F. 110).

The protestors engaged in speech on public property (III S.F. 134, 135-136). They shouted at patients and sang (II S.F. 48). Some held banners concerning abortion, and some prayed (II S.F. 48; III S.F. 120-121, 185-186). Alice Harper testified that she was sidewalk counseling (III S.F. 223). The group was peaceful (III S.F. 135, 185).

Patients were not restrained physically from going up to the Clinic (II S.F. 42-43), and people went in and out of the Clinic (III S.F. 188-206). Escorts were used to bring patients to the Clinic (II S.F. 43). According to Officer R.G. Wells of the Houston Police Department, neither he nor Houston Police Officer J.C. Linney (who did not testify) had any difficulty in moving about (III S.F. 149-150).

3. *The Disobedience Conduct.* Petitioners and others were in the sidewalk or driveway area along San Jacinto Street (III S.F. 118, 120-121). Linney informed them of the

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[4] The trial commenced on August 30, 1989, and concluded, with sentencing, on September 1, 1989. The pretrial hearing here involved was conducted on May 23, 1989.

violation of law and gave them five minutes to remove themselves voluntarily (III S.F. 116, 118-119, 168). Individual warnings to move were given also by Linney. Some moved and were not arrested, while others refused and were arrested.

Amerson, who was attached to one of the barrels by his ankles, was requested to leave, as was Horan, who was attached by the neck to another barrel (III S.F. 116, 118, 119, 121). Amerson made no effort to move, and Horan did not ask for more time in order to move (III S.F. 122-123). Neither asked for a key or made any effort to unlock himself (III S.F. 122). They were arrested after they were freed from the barrels. Reed, who was moving back and forth in the driveway area, refused to move and was arrested (III S.F. 120-121, 122, 123, 127).

4. *The Justification Defenses.* a. *The Ruling.* After the State rested its case-in-chief, Defense Counsel requested the Trial Court, outside the presence of the Jury, to rule on the admissibility of evidence on the defense of necessity and the defense of third person (III S.F. 176). The Trial Court said that it "would not have those defenses in this case", and that, if Counsel wished "to make a record" (of them), he "may do so" (III S.F. 177). Counsel said that they should be able to go into such defenses because there was uncontradicted evidence before the Court to the effect that the Clinic was not licensed at the time of the protest activity (III S.F. 177-178). The Court denied the request without even hearing from the State's Attorney (III S.F. 178). Counsel objected to such ruling.

b. *The Bills of Exceptions.* Subsequently, Defense Counsel made four bills of exceptions (on such defenses) outside the presence of the Jury, one from each Petitioner and one from the Assistant Administrator of the Clinic:

(1). *Petitioner Amerson.* Amerson testified or admitted, in part, that, on October 29, 1988, he was at the Clinic to protest abortion, and that he locked up to one of the barrels there (III S.F. 242). He locked up because he hoped to "let women talk to the sidewalk counselors that were

there so that they may change their mind and to keep their child" (III S.F. 242). This would result because "it would slow it down to where we could talk to them" (III S.F. 242). Sidewalk counselors were there that day (III S.F. 242). By locking to the barrel, he "would be standing there in the gap for the baby. And he would have a voice" (III S.F. 243).

He thought that abortion was "the greatest evil that there is", and that America was suffering because of it (III S.F. 244). In his opinion, his conduct addressed that evil. He felt that it was reasonably necessary to do what he did in order to address it; and, according to "them" (a Crisis Pregnancy Center), lives were saved as a result of the protest activity (III S.F. 243-244).

(2). *Petitioner Horan*. Horan testified or admitted, in part, that, on October 29, 1988, he was at the Clinic, lying on a sidewalk, and was attached to a barrel (III S.F. 232). He had two purposes in being attached, namely, to make a media event to show that the Clinic was an abortion clinic, and "to slow things down so that sidewalk counselors could have a chance to talk to the girls that were coming in to have their babies murdered" (III S.F. 233, 235-236). He felt that his conduct aided the two goals (III S.F. 236).

He viewed abortion as murder, and his conduct that day was directed toward an alleviation of that (III S.F. 237). Lives were saved that day (III S.F. 236). He felt that the only way he could help the abortion situation was by doing what he did; that that had an impact because he "gave the sidewalk counselors a chance to talk to the girls that were coming up to have their babies murdered"; that he considered abortion to be a greater problem than the problem with which he was confronted; and that he considered that his conduct was accomplishing a greater good (III S.F. 237-238).

(3). *Petitioner Reed*. Reed testified or admitted, in part, that, on October 29, 1988, he was at the Clinic where he protested against abortion (III S.F. 247). he did this by

standing on the public sidewalk in front of the Clinic (*Ibid.*). He hoped to accomplish "[s]everal things that were already spoken of. Mainly, to keep babies from being killed that day" (*Ibid.*).

He viewed abortion as "[t]aking an innocent life" (III S.F. 248). To his knowledge, abortions were conducted at the Clinic that day (*Ibid.*). He knew that a lot less women showed up for abortions that day; that it was apparent to him that "women had a chance to change their minds and not have an abortion"; that he was arrested that day; that the media attention from the arrest "could have resulted in saving some lives. But, as far as there that morning, we saved more lives than if I hadn't been [there]"; and that he felt that it was reasonably necessary to do what he did in order to save lives (III S.F. 248-249).

(4). *State Witness Isabel Diez.* Isabel Diez, the Assistant Administrator of the Clinic, testified or admitted, in part, that, on October 29, 1988, about 15 abortions were performed at the Clinic (III S.F. 254). This was not typical for a Saturday (III S.F. 254-255). Roughly 40 abortions were scheduled that day. The droppage in the number of abortions that day was the result of the protest (III S.F. 255). Most of the women rescheduled their abortions, but 2 or 3 did not (*Ibid.*).[5]

D. *Federal Questions.* The federal issues in Questions Presented 1 and 2, above, were raised in Petitioners' Motions To Quash 6 and 5, respectively, which were

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[5] Defense Counsel tendered the evidence on the Bills of Amerson, Horan and Reed and requested the Trial Court to permit the Jury to hear same (III S.F. 239, 245, 250). These requests were denied. Counsel did not tender the evidence on the Diez Bill or request the Court to permit the Jury to hear it. This oversight was not critical since the Court had told the Jury previously, when excusing them for the evening, "that is all the testimony that you are going to hear in this case" (III S.F. 251). At that time, the State had rested and closed and the Defense did so as well subject only to Mrs. Diez's Bill (*Ibid.*).

denied by the Trial Court. These rulings were raised on appeal as error by Amerson and Reed and as fundamental error by Horan.[6] The Court of Appeals overruled such points of error (Pet. App. 2-5) and overruled Petitioners' Join Motion for Rehearing which re-raised them and certain subsidiary or related points.[7] The Court of Criminal Appeals refused Petitioners' Joint Petition for Discretionary Review which included such points and subsidiary or related points (postured as questions).

The federal issue presented in Question 3, above, developed not long after conviction and sentencing when the U.S. District Court for the Southern District of Texas, in different litigation, ruled that the conditions of confinement in Harris County jail facilities, including the Harris County Jail (where Petitioners were to serve their jail sentences and to work off any fine(s) not paid), were unconstitutional under the 8th and 14th Amendments to the U.S. Constitution. Petitioners, freed on appeal bonds,

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[6] Since it was not clear that the Trial Court's rulings applied to Petitioner Horan, his relevant appellate points of error were raised as fundamental error. This uncertainty stems from the fact that Petitioners' Attorney herein, who was handling the pretrial proceeding for his Clients at that time (Amerson and Reed) as well as others, forgot to tell the Court or the court reporter that he was representing Horan's Attorney or Horan. He was representing his Clients at that time and various other defense attorneys and their clients for purposes of the hearing. See I S.F. 2, 3, 14-15, 30. Subsequently, Petitioners' Attorney represented Horan at the trial and throughout the appellate process. Despite such uncertainty, it is clear that the trial proceeded as though Horan's Motions to Quash 5 and 6 were denied.

[7] These subsidiary or related points were that the Court of Appeals erred when it failed to apply the standard of whether or not § 42.03 proscribes a substantial amount of constitutionally protected activity, and when it failed to determine whether or not § 42.03 provides explicit standards for its enforcement.

raised on appeal the unconstitutionality of their proposed confinement in such Jail. While the Court of Appeals said that "punishment is not unconstitutionally cruel or unusual" where, as here, it was within the statutory range of punishment, it did not reach the merits of the errors claimed by Petitioners (Pet. App. 12). Instead, it said that Petitioners, who were currently on bond pending their appeals, "lack[ed] standing to complain about the conditions in the Harris County Jail until they are in actual custody and can allege an 'injury in fact'. [citing a Texas case]" (Pet. App. 12). Petitioners challenged this ruling in their Joint Motion for Rehearing. The Court of Appeals overruled such Motion, and the Court of Criminal Appeals refused Petitioners' Joint Petition for Discretionary Review which raised this point again.

The federal issues in Questions Presented 4, above, arose at the appellate stage, with the Opinion of the Court of Appeals, but grew out of the Trial Court's refusal to allow the defense of third person and its refusal to admit, or forclosure of, testimony developed in the Bills, above. In their Joint Motion for Rehearing, Petitioners challenged the ruling by the Court of Appeals that it "must reject" Petitioners' underlying challenge to *Roe v. Wade*, 410 U.S. 113 (1973) (Pet. App. 7). The Court of Appeals overruled such Motion, and the Court of Criminal Appeals refused Petitioners' Joint Petition for Discretionary Review which raised such challenge again.

The federal issues in Question Presented 5, above, are strictly for consideration and resolution by this Court. However, Petitioners raised on appeal, in their Joint Motion for Rehearing and in their Joint Petition for Discretionary Review, that *Roe* was void as violative of the U.S. Constitution and fundamental principles of personal jurisdiction. This was a collateral attack on *Roe* as part of Petitioners' claim that the defense of third person should have been allowed in the case, i.e., that the unlawful force of such defense was met by the abortion conduct involved, that such conduct was violative of the Texas

anti-abortion law which purportedly was held unconstitutional in *Roe*, and that such law is still in effect because *Roe* itself was void as violative of the U.S. Constitution and fundamental principles of personal jurisdiction.

ARGUMENT

I.

SECTION 42.03 OF THE TEXAS PENAL CODE IS OVERBROAD FACIALLY AND VOID FOR VAGUENESS, IN VIOLATION OF THE U.S. CONSTITUTION

A. *The Statutory Section. The Texas Penal Code* provides, in pertinent part:

> § 42.03. *Obstructing Highway or Other Passageway*
>
> (a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:
>
> (1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or
>
> (2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:
>
> (A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1) of this subsection; or
>
> (B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

B. *Section 42.03 Is Overbroad Facially.* The Court of Appeals erred when it upheld the constitutionality of Section 42.03 against Petitioners' U.S. (and Texas) constitutional challenges for facial overbreadth. The Court said, in part, that "[t]he statute complained of regulates conduct, and not speech, and is not constitutionally overbroad. *Smith v. State*, 772 S.W. 2d 946, 949 (Tex. App. – Dallas 1989, pet.ref'd.)" (Pet. App. 4).

What the Court missed, however, is that conduct *and* 1st Amendment activities of speech, press and association go together; that conduct can constitute a form of speech (e.g., wearing an arm band) [*Tinker v. Des Moines I.C.S.D.*, 393 U.S. 503, 514 (1969)] or be intertwined inextricably with speech (e.g., picketing) [*Grayned v. City of Rockford*, 408 U.S. 104, 118-119 (1972)];[8] and that a penal enactment may be invalid facially if it proscribes a substantial amount of constitutionally protected conduct [*City of Houston v. Hill*, 482 U.S. 451, 458 (1987)]. As shown below, Section 42.03 is overbroad facially because it sweeps within its ambit substantial constitutionally protected activities of speech, press and association in public fora, in violation of the 1st amendment to the U.S. Constitution (rights of speech, press and association), as enjoined on the states under the Due Process Clause of the 14th Amendment thereof.

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[8] Amerson's and Horan's attachment to the barrels constituted symbolic speech of a dramatic nature. See *Texas v. Johnson*, 109 Sup. Ct. 2533, 2540, 2547 (1989); *Spence v. Washington*, 418 U.S. 405, 409-411 (1974). These activities were " 'sufficiently imbued with elements of communication.' *Spence*, 418 U.S., at 409, 94 S. Ct., at 2730, to implicate the First Amendment." *Texas v. Johnson, supra*, 109 Sup. Ct. at 2540.

1. *The Statutory Sweep.* The obstruction and disobedience offenses are grounded in (1) ten types of places (e.g., streets, sidewalks, entrances, exits) "to which the public or a substantial group of the public has access" and (2) a catch-all category of "any other place used for the passage of persons, vehicles or conveyances" but *without* the requirement of *access* by the public or a substantial group of the public. These places include public as well as private property.

This broad sweep is compounded by the use of broad terms and by the absence of any guidance as to how long an obstruction must exist for problem purposes. Thus, "obstruct" means, in part, to render passage "unreasonably inconvenient"; the actor's conduct must be "without legal privilege or authority"; and, in the area of the disobedience offense, the disobedience must be of a "reasonable request or order to move to prevent an obstruction." As for the length of an obstruction, one of ten seconds may be as culpable as one lasting an hour or longer.

2. *Effect on Constitutionally Protected Activities.* On its face, § 42.03 sweeps within its prohibitory ambit substantial constitutionally protected activities of speech, press and association in public fora: The peaceful congregation of persons on a public sidewalk or within the nonstreet portion of a public street right-of-way is a constitutionally protected right of association, yet those who do so would be subject to arrest under § 42.03 if, for example, a peace officer were to consider the gathering as an obstruction to passage within the meaning of such Section. Similarly, peaceful picketing or demonstrating in such an area, such as in the vicinity of an abortion clinic, is a constitutionally protected right of speech, yet those who do so would be subject to arrest under like circumstances. Further, the peaceful distribution of literature by one or more persons in such a place, which may cause

some pedestrian congestion, is a constitutionally protected right of press, yet such person(s) would be subject to arrest under like circumstances.

In like vein, those who engaged in such activities would be subject to arrest if they disobeyed a "reasonable" order or request to move from a peace officer, etc., where such officer believed it necessary to issue such an order or request to prevent an "obstruction" to passage on a sidewalk, etc., i.e., that passage would be rendered "unreasonably inconvenient" or "impassable" or "hazardous."

3. *Not Subject to a Limiting Construction.* Section 42.03 cannot be saved constitutionally by a limiting construction because the Section has and was intended to have a broad and pervasive reach. See PRACTICE COMMENTARY, 1st para., following Section 42.03 of *Vernon's Texas Penal Code.* The places covered and the meaning of "obstruct" fulfill this goal and do not lend themselves to a limiting construction. The catch-all places covered cannot be limited to the ten places specified because the *access standard* of such places, above, does not apply to the catch-all places. The terminology, "unreasonably inconvenient" and "reasonable request or order to move", were intended to have broad and/or subjective reaches and do not lend themselves to limiting constructions.

While *Tex. Penal Code,* § 42.04, provides a *defense* to an alleged violation of § 42.03 [as well as to § 42.01(a)(5) of the *Texas Penal Code* (making unreasonable noise)] where the conduct consists of speech or other communication, etc., the problem is that one who is exercising his legitimate 1st amendment rights of speech, press and/or association should not be subjected to criminal charge. Such activities are guaranteed by and licensed under supreme law. They should be excluded from § 42.03.

C. *Section 42.03 Is Void for Vagueness.* The Court of Appeals erred in upholding the constitutionality of § 42.03 against the challenges for vagueness. Insofar as

the U.S. Constitution is concerned, § 42.03 is unconstitutionally vague, in violation of the liberty reach of the Due Process Clause of the 14th Amendment thereof, *because*

- it does not give fair notice of what is proscribed;
- it does not furnish "explicit standards" for enforcement thereof by law enforcement personnel, courts or juries; and
- it impinges impermissibly upon legitimate 1st Amendment activities of speech, press and association.

See *Grayned v. City of Rockford, supra,* 408 U.S. at 108-109. The Court of Appeals considered only the question of "fair notice" (Pet. App. 4).[9]

1. *Failure To Provide Fair Notice of What Is Prohibited.* Section 42.03 fails to provide to a person of ordinary intelligence a reasonable opportunity to know what is prohibited thereby. Several difficulties come to the fore: *First,* an obstruction of *actual passage* is not required for violation of the Section. "Obstruct", for purposes of the Section, "means *to render* impassable or *to render* passage unreasonably inconvenient or hazardous" [Section 42.03(b)]. (Emphasis added.) As a result, one who stands or reclines in the middle of a narrow sidewalk in an intentional, knowing or reckless manner, for example, could be arrested for obstructing a sidewalk under Section 42.03(a)(1) even though no one, in fact, was obstructed by his conduct. By the same token, and while not presented or argued to the Trial Court, that same person could be arrested under Section 42.03(a)(2)(A) if he disobeyed a reasonable request or order to move "to

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[9] Since certain 1st Amendment rights of speech and association are involved in this case, § 42.03 should be examined facially and as applicable to others not before the Court. See *Grayned v. City of Rockford, supra,* 408 U.S. 109-114; *Coates v. Cincinnati,* 402 U.S. 611, 614-616 (1971).

prevent" an obstruction there even though no one, in fact, was obstructed by his conduct.

Second, the "unreasonably inconvenient" aspect of the definition of "obstruct" is vague and subjective. This may mean one thing to one peace officer, etc., something else to another, etc., and something different as to still another, etc. The Section fails to define the term or provide an objective standard for uniform application of it. As a result, a person of ordinary intelligence would have to guess or ponder its meaning and application. See *Coates, supra*, 402 U.S. at 414.

Finally, the "reasonable request or order to move to prevent an obstruction" portion of the disobedience offense is vague and subjective, particularly when this is evaluated in the context of the impermissible latitude furnished in *defining obstruction* and of the *nonrequirement* of an actual obstruction of passage. As shown above, the request or order to move is issued in order "to prevent" an obstruction. However, "obstruct" has a vague and subjective reach (with the "unreasonably inconvenient" aspect of same), and § 42.03 does not require that passage be obstructed in point of fact. That being the case, the reasonableness of the request or order to move has a subjective reach at variance with the requirement of fair notice.

The brush-aside of Petitioners' challenges by the Court of Appeals (Pet. App. 4-5) is erroneous. The terms at issue do *not* have common meanings. As shown above, they are vague and subjective. As for failure to cite authority to the Court of Appeals for the proposition that the words are vague, the short answer is that there should be no U.S. constitutional requirement to cite such authority where the terms *on their very face* are vague and subjective.

2. *Failure To Provide Explicit Standards for Enforcement*. The "unreasonably inconvenient" aspect of the definition of "obstruct" is vague and subjective, thereby

giving a law enforcement official, for example, impermissibly broad latitude in defining what constitutes an obstruction of a statutorily covered place. See *Coates v. Cincinnati, supra,* 404 U.S. at 414-416; *Cox v. Louisiana,* 379 U.S. 536, 551 (1965). This, of course, is critical to the offense of obstruction under Section 42.03(a)(1) and the offense of disobedience of a reasonable request or order to move from a peace officer, etc. "to prevent" such an obstruction under Section 42.03(a)(2)(A). In order to prevent arbitrary or discriminatory application of the Section, the term, "unreasonably inconvenient", should be defined in a clearcut fashion for ready and evenhanded application, or the Section must set forth a clear standard for objective application. The Section fails on both scores.

3. *Impingement Upon 1st Amendment Freedoms.* As shown above, pp. 15-16, § 42.03 sweeps within its penal reach substantial 1st Amendment activities. This is compounded by the vague aspects of § 42.03 presented immediately above. As a result, § 42.03 not only suffers from overbreadth and vagueness but operates to abridge, or to chill, the exercise of legitimate 1st Amendment activities of speech, press and association in public fora.

II.

PETITIONERS HAD STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THEIR JAIL SENTENCES FOR EXECUTION IN THE HARRIS COUNTY JAIL

The Court of Appeals erred when it ruled that Petitioners, who were free on appeal bonds, lacked standing to complain about the conditions at the Harris County Jail "until they are in actual custody and can allege an 'injury in fact'. *Wilson v. State,* 692 S.W.2d 661, 667 (Tex. Crim. App. 1984) (Op. on reh'g)" (Pet. App. 12). There should be no question but that Petitioners have a sufficient personal stake in the appeal proceedings to assure "concrete

adverseness" for "standing purposes." See *Baker v. Carr*, 369 U.S. 186, 204 (1962); *Flast v. Cohen*, 392 U.S. 83, 99-101 (1968). Each Petitioner stands to serve a substantial amount of time in confinement at the Harris County Jail, the conditions of which have been ruled "cruel and unusual in violation of the Eighth and Fourteenth Amendments." *Alberti v. Klevenhapen*, Civ. Action No. H-72-1094, FINDINGS OF FACT AND CONCLUSIONS OF LAW of September 25, 1989 (U.S. Dist. Ct., S.D. Tex., Hou. Div.), p. 25. See U.S. Const., 8th Amendment, Cruel and Unusual Punishments provision, and 14th Amendment, Due Process Clause. Standing is especially pronounced as to Amerson, who is legally blind, since his incarceration should require a certain amount of special attention or handling; and to rule that he lacks standing at this juncture to complain about recently adjudicated unconstitutional conditions at such Jail is erroneous. Under Texas law, Petitioners are in constructive restraint of their liberties by virtue of such appeal bonds. *Ex parte Ormsby*, 676 S.W. 2d 130, 132 (Tex. Cr. App., En Banc, 1984).

In the Court of Appeals, Petitioners sought to have their jail sentences for execution in Harris County Jail be stricken as unconstitutional; or, in the alternative, that they be suspended until such time that the conditions at such Jail were no longer unconstitutional, but, if such conditions were not remedied within a reasonable time to be prescribed by the Court, that such sentences be stricken as unconstitutional. The Court of Appeals should have addressed the merits of their claim.

III.

THE COURT OF APPEALS ERRED WHEN IT RULED THAT IT "MUST REJECT" PETITIONERS' UNDERLYING CHALLENGE TO *ROE V. WADE*

A. *Background.* The *Texas Penal Code* provides, in pertinent part:

Section 9.33. *Defense of Third Person*

A person is justified in using force or deadly force against another to protect a third person if:

(1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 of this code in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

The Trial Court would not allow the defense of third person (or the defense of necessity) in the case, including evidence in support thereof.

On appeal, Petitioners contended, in part, that the unlawful force requirement of § 9.33 was met in three ways – (1) because the Clinic was not licensed under the Act to perform abortions on the date in question, (2) because abortion is unlawful force as applied to the unborn under Texas tort law and (3) because abortion is unlawful force or unlawful deadly force since it violates certain Texas anti-abortion law which is still in effect because *Roe v. Wade, supra,* 410 U.S. 113, which purported to hold such law unconstitutional, is itself void as violative of the U.S. Constitution and fundamental principles of personal jurisdiction. Such Texas anti-abortion law is that in *Vernon's Annotated Texas Penal Code* (1925) arts. 1191-1194, 1196 (former Texas Penal Code). See *Roe, supra,* 410 U.S. at 117, fn. 1.

Insofar as ground "(3)", above, is concerned, Petitioners contended on appeal that *Roe* was void as violative of the U.S. Constitution and fundamental principles of personal jurisdiction. They set forth eight areas of such illegality.

B. *The Merits.* The Court of Appeals considered that Petitioners had premised their contentions on the two justification defenses – defense of third person and defense of necessity – "on the purported invalidity of *Roe v. Wade* * * * ", and, after describing *Roe* as this Court's "decision concerning the privacy of a woman's decision on whether or not to abort her unborn child", ruled that it "must reject appellants' [Petitioners'] underlying challenge to *Roe* [citing cases]" (Pet. App. 7-8). The Court, however, was *not required* to reject Petitioners' collateral attack against *Roe* resulting from application of the defense of third person *vis-a-vis* Texas statutory anti-abortion law purportedly held unconstitutional in *Roe*. Petitioners' challenges against *Roe* were grounded constitutionally and jurisdictionally and resulted from exercise of *their right to defend themselves* under *Tex. Penal Code*, § 9.33.

While this Court is the final authority in the interpretation of the U.S. Constitution, there is *nothing* in U.S. constitutional law or logic which even suggests that obedience to a Supreme Court decision is required where the decision is rendered *without jurisdiction* or is *violative otherwise of the U.S. Constitution*. Indeed, it is well established that if a court in the United States violates the U.S. Constitution in a proceeding before it, it *loses jurisdiction to proceed to judgment*, and any "judgment" which it might render would be *void*. E.g., *Johnson v. Zerbst*, 304 U.S. 458, 467-468 (1938); *Windsor v. McVeigh*, 93 U.S. 274, 277-284 (1876). This Court is capable of violating the U.S. Constitution. See *Erie R. Co. v. Tompkins*, 304 U.S. 64, 77-78, 79-80 (1938), where the Court even *admitted* that it and lower federal courts had done so with application of the doctrine of *Swift v. Tyson*, 16 Pet. 1 (1842).

Since, as shown below, *Roe* violates the U.S. Constitution and fundamental principles of personal jurisdiction, it is *not* law, much less constitutional law. The Court of Appeals should have addressed and decided Petitioners' collateral attack instead of rejecting it outright. It should have ruled that the unlawful force element of the defense

of third person was met by the Clinic's abortion activities since those activities were violative of such Texas statutory anti-abortion law; and that, based on the Bills and other evidence,[10] Petitioners were entitled to raise and support such defense against the charges here involved.

IV.

ROE V. WADE SHOULD BE RECONSIDERED AND OVERRULED

A. *Constitutional or Jurisdictional Grounds. Roe v. Wade, supra,* 410 U.S. 113, should be reconsidered and overruled on various constitutional or jurisdictional grounds as follows:

1. *Manufacture of the Liberty of Abortion.* In *Roe,* this Court violated Article III of the U.S. Constitution by creating a constitutional liberty of abortion and by restricting the states of *their* reserved constitutional authorities to legislate in this area of substantial state interest. Cf. *Bowers v. Hardwick,* 478 U.S. 186 (1986). This violated also the unenumerated rights of the people, as

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[10] The Court of Appeals said that "[t]here is no testimony concerning the welfare of the patient or the procedures performed at the clinic" as support for its conclusion that Petitioners' Bills of Exceptions did not meet all of the elements of the defense(s) (Pet. App. 8, 9). The short answer, however, is that patient welfare and abortion procedures at the Clinic were irrelevant to application of such defense relative to the unborn.

The Court's assertion that "an unborn child is not at the present time under Texas law a 'person' for purposes of the defense of defending third persons [citing two cases]" (Pet. App. 9-10) ignores the substantial legal posture of an unborn child under Texas law, see pp. 27-28, *infra,* and seems to indicate that that situation might change in the future. Its further assertion that "[d]efense of third persons is presently precluded in abortion cases in Texas [citing case]" (Pet. App. 10) ignores such legal posture and overlooks the sweep of Section 9.33, above.

guaranteed by the 9th Amendment to the U.S. Constitution, and the division of powers concept, as guaranteed by the 10th Amendment thereof. See *Erie R. Co. v. Tompkins, supra,* 304 U.S. at 77-78.

Fundamental liberties not enumerated in the text of the U.S. Constitution have been defined as "those that are 'deeply rooted in the Nation's history or tradition' " or, more narrowly, "those interests that are 'implicit in the concept of ordered liberty' such that 'neither liberty nor justice would exist if [they] were sacrificed' " [*Thornburgh v. American College of Obstetricians and Gynecologists,* 476 U.S. 747, 790-791 (1986) (White, J., joined by Rehnquist, J., dissenting)]. In *Roe,* this Court did *not* establish abortion as a fundamental right under either of these tests or, for that matter, under *any* recognized constitutional standard. Its denomination of abortion as a "fundamental right" was but the *ipse dixit* of seven Justices and imposed upon the Nation in contravention of the U.S. Constitution and of duly enacted laws.

2. *Failure To Apply Properly the Constitutional Implied Rights Concept to "Liberty" Under the 14th Amendment.* While "liberty" is a broad concept, "life" is the most basic of rights for, without it, all other rights and interests are meaningless. Where was the correlation between "liberty" and the right to destroy unborn life? Or the basis for the "fundamental" ranking of such a right? Cf. *Bowers v. Hardwick, supra,* 478 U.S. 186. Not only was abortion a crime at common law and in Texas, but the legal and social heritage of this Nation viewed abortion not as a "right" but as a naked wrong. Moreover, the Constitution protects the life rights of persons against certain governmental deprivations, and *nowhere* does it give any human being the right to destroy the life of another. If the implied rights decisions of this Court were applied properly, the life right of the unborn would have prevailed clearly over any liberty to destroy the same.

3. *Failure To Apply Levy v. Louisiana, 391 U.S. 68 (1968), Concerning Human Personhood Under the 14th Amendment.* This Court failed to apply the "live," "human" and "having a being" test of 14th Amendment personhood postulated by it in *Levy v. Louisiana*, 391 U.S. 68 (1968), to the affected unborn children. If such a decision can be overlooked or disregarded by the Court itself, how can it be maintained that a constitutional interpretive decision has "law of the land" ranking?

4. *Failure To Apply the Constitutional Implied Rights Concept to 14th Amendment Personhood for the Unborn.* Since a born person has 14th Amendment recognition, and since such a person does not originate at birth, it follows that 14th Amendment recognition extends to such person prenatally. The person after birth is the selfsame person before birth, only at a different developmental stage. This is a matter of common knowledge.

5. *No Representation.* Neither abortion "survivor" children nor unborn children threatened and endangered by abortion were represented before the Three-Judge U.S. District Court or this Court in *Roe*. Abortion "survivor" children born in this country are U.S. citizens (with extremely minor exceptions), yet they are doomed to die and die primarily due to prematurity, abortional injury or lack of care. Sometimes they are killed outright.[11] Unborn children, with well recognized legal postures under the laws of the United States, Texas and other States, are killed pervasively by abortion.

Abortion "survivors" and unborn children are persons or entities with legal personalities under the Due Process Clause of the 5th Amendment to the U.S. Constitution. The Judgments of the U.S. District Court and this

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[11] See, e.g., *Showery v. State*, 690 S.W. 2d 689, 694, 695-696 (Tex. App. – El Paso, 1985, pet. dis. rev. ref.), where a girl who survived a hysterotomy abortion was drowned by the abortionist in a bucket of water.

Court in *Roe*, rendered without any representation of such victims by guardian or next friend (or by counsel for such guardian or next friend), constituted *naked* deprivations of life, liberty and property without due process of law, in violation of the Due Process Clause of such 5th Amendment. Accordingly, such Judgments are unconstitutional and void as to them. See *McArthur v. Scott*, 113 U.S. 340, 391-392, 404 (1885) (unborn children); *Pennoyer v. Neff*, 95 U.S. 714, 733-734 (1878) (U.S. citizens).

6. *No Personal Jurisdiction*. Neither the Three-Judge U.S. District Court nor this Court in *Roe* had personal jurisdiction over such abortion "survivor" or unborn children. Yet such children were affected vitally by those proceedings, and had a right to be before such Courts through next friends or guardians (or by counsel for such guardians or next friends). The Judgments of such Courts, therefore, were unconstitutional and void as to them. See *Ibid*.

Moreover, this deficiency operated to divest such Courts of authority to pronounce judgment affecting them personally. Neither the unborn children who were conceived and killed by abortion after *Roe* nor abortion "survivor" children after *Roe* could be affected jurisdictionally by *Roe* in their rights posture, yet they die as a result of *Roe* or the abortion "ethic." Accordingly, the Judgments of such Courts, rendered without personal jurisdiction over such infant victims, are void as violative of fundamental principles of personal jurisdiction. See *Ibid*.

7. *Invidious Discriminations*. The discriminations perpetrated in *Roe* against abortion "survivors" and unborn children, as compared to corporations and the unaborted born, are invidious and deprive such "survivors" and the unborn of life, liberty and property without due process of law, in violation of the Due Process Clause of the 5th Amendment to the U.S. Constitution.

Corporations, which are artificial beings and not mentioned in the U.S. Constitution, are "persons" under the Due Process Clause of the 5th Amendment to the U.S. Constitution and under the Due Process and Equal Protection Clauses of the 14th Amendment thereof, while actual unborn human beings, recognized in law and possessive of substantial legally cognizable rights, are denied such personhood. A prematurely born child of 7-month gestational age has 14th Amendment personhood while an older and more developed unborn child of 8-month gestational age does not. Neither the 5th nor the 14th Amendments to the U.S. Constitution can justify such crazy-quilt discriminations. Corporations enjoy the protections of the law while abortion "survivors" are allowed to be brought forth in the most monstrously hostile environment for defenseless children.

8. *Naked Deprivations of Rights.* The Due Process Clause of the 5th Amendment stood as a bar to this Court's judgment in *Roe* which endangered the rights of abortion "survivors" and authorized the destruction of a large body of legally cognizable rights of the unborn. See *Marbury v. Madison*, 5 U.S. 137, 163 (1803); *Munn v. Illinois*, 94 U.S. 113, 134 (1887).

An abortion "survivor" in Texas would be a U.S. and Texas citizen under the Citizenship Clause of said 14th Amendment, and entitled to citizen protections under Article I, Section 19, of the Texas Constitution; a "person" within the protective reach of the Due Process and Equal Protection Clauses of said 14th Amendment and the Due Process Clause of said 5th Amendment; an "individual" within the protection of the *Texas Penal Code* [See *Tex. Penal Code*, § 1.07(a)(17).]; a "child" under the *Texas Family Code*, § 11.01(1), and the tort law of Texas; and would have the same rights, powers and privileges of a child born in Texas after the normal gestation period (*Tex. Family Code*, § 12.05).

As for unborn children, there is no question but that they have substantial legal recognitions and rights postures in Texas and elsewhere. In Texas, an unborn child may be represented in judicial proceedings which affect his or her property rights [*Bradley v. Henry*, 239 S.W. 2d 404 (Tex. Civ. App. – Fort Worth, 1961, no writ)], and may share with his mother in a wrongful death award for the death of his father [*Brantley v. Boone*, 34 S.W.2d 409, 411 (Tex. Civ. App. – Eastland, 1931, no writ)]. A "duty of care" is owed to the unborn child under the prenatal tort injury doctrine, as recognized in all 51 domestic U.S. Jurisdictions. See Prosser, *Handbook of the Law of Torts* (4th ed., 1971), § 55, pp. 335-338. Certain property interests may vest in an unborn child [*Medlock v. Brown*, 136 S.E. 551, 553 (S.C. Ga., 1927) (interest in trust); *Chrisfield v. Storr*, 36 Md. 129, 145-146 (Ct. App. Md., 1872) (remainder interest in real property)]. In medical areas, the life interest of an unborn child has been recognized and protected over the religious or other interest of the mother, where a blood transfusion or a caesarian operation is needed. *Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson*, 201 A. 2d 537, 538 (S.C.N.J., 1964), *cert. denied*, 337 U.S. 985 (1965) (blood transfusion); *Jefferson v. Griffin Spaulding Co. Hosp. Authority*, 274 S.E. 2d 457, 459, 460 (S.C. Ga., 1981) (caesarian operation).

B. *Other Grounds – Unintended Consequences. Roe* should be reconsidered and overruled because it has resulted in various consequences not intended by the Court:

1. *Abortion on Demand.* In *Roe*, this Court made it clear that a pregnant woman does not have an absolute right to terminate her pregnancy "at whatever time, in whatever way, and for whatever reason she alone chooses" (410 U.S. at 153). The Constitution does not require "abortion on demand" (Concurring Opinion, Burger, C.J., 410 U.S. 208). In *Doe v. Bolton*, 410 U.S. 179 (1973), the Court said that "*Roe v. Wade, supra*, sets forth

our conclusion that a pregnant woman does not have an absolute constitutional right to an abortion on her demand" (410 U.S. at 189). The opposite, as the Court may well take note, has occurred and continues. Well over one million unborn children are killed by abortion in this Nation each year. Abortion "survivor" children, practically all of whom are U.S. citizens, die also from abortion or its "ethic." Even where a state proscribes abortion after viability, with life and health exceptions per *Roe*, the "health" meaning under *Doe* is so broad as to make such proscription more form than substance.

2. *Effect of Abortion and the Abortion "Ethic" on Children Who "Survive" Abortion.* Abortions and applications of the abortion "ethic" bring about deaths of U.S. citizen children who continue to live *after* they have been aborted. See p. 25, including footnote 11, *supra*. Moreover, since "unsuccessful" abortions (i.e., those resulting in live births) could translate into legal claims against the abortionists, etc., "success" is encouraged legally – to the naked detriment of infant U.S. citizens. See *Stills v. Gratton*, 127 Cal. Rptr. 652, 657, 658-659 (Cal. App., 1st Dist., 1976).

3. *Internal Legal Chaos. Roe* has introduced legal chaos in Texas and other domestic U.S. Jurisdictions relative to unborn children. They have substantial legal recognitions and rights, yet they may be killed by abortion. See pp. 27-28, above. In the majority of the states and in the District of Columbia, a wrongful death action is maintainable under their wrongful death statutes for the death of a viable unborn child, and, in two states, such an action is maintainable prior to viability (Georgia, "quick"; Rhode Island, unborn child a person whther or not viable). See ANNOTATION, "RIGHT TO MAINTAIN ACTION OR TO RECOVER DAMAGES FOR DEATH OF UNBORN CHILD", 84 *A.L.R. 3rd* 411, 422-423, 432-446 (1978) and 1989 Supp. at 68, 69. A "duty of care" is owed

to the unborn child under the prenatal tort injury doctrine. How can the "law" recognize a legal status and rights posture in an unborn child while at the same time authorizing the destruction of such child by abortion on demand per *Roe*? This makes the continued existence of legal rights depend upon the desires of others – hardly an object of what law should be or allow.

CONCLUSION

For the reasons and authorities set forth, it is submitted respectfully that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

RICHARD W. SCHMUDE
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Attorney of Record for Petitioners

April, 1991

APPENDIX

Affirmed and Opinion Filed June 28, 1990.

SEAL

In The
Fourteenth Court of Appeals

NOS. C14-89-00828-CR
A14-89-00829-CR
B14-89-00830-CR

CHARLES DALE REED
JAMES CLIFFORD HORAN
MICHAEL SCOTT AMERSON,

Appellants

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court
At Law No. 5 Harris County, Texas Trial
Court Cause Nos. 8916760; 8916761; 8916763

OPINION

Appellants were charged by information with the misdemeanor offense of obstructing a passageway. TEX. PENAL CODE ANN § 42.03. Each appellant was found guilty by a jury. Punishment was assessed by the jury at ninety days in jail and a $1000 fine for appellant Reed. The other appellants received 180 days in jail and a $1000 fine. We affirm.

Appellant's convictions arise out of events surrounding an abortion protest in October 1988. The appellants and several other protestors had chained or otherwise secured themselves to barrels and other fixed objects in front of a Houston clinic. The barrels had concrete in them and were positioned in such a way that no vehicles could get into or out of the clinic. After a request by the security guard failed to convince the protestors to move, the Houston Police were called. The demonstrators were told to move from the driveway, but the appellants as well as several others remained. A police officer videotaped the demonstration including the reading to each of the appellants of the violation with which they would be charged. Each of the demonstrators were given an opportunity to move before being arrested.

Before us are individuals charged with a crime. Most persons so charged have been engaged in activity motivated by selfish or base motives. Such is not the case here. Before this court are individuals who have been motivated by the highest principles. Their concern is assisting other human beings and preserving what they conscientiously believe to be human life. The question before us, however, is not their motivation or the correctness of their convictions. This court must determine solely the question of whether these individuals, however well intentioned, have actually broken a law of the state of Texas in effect at the time of the occurrence in question. No individual, whether he be citizen, lawyer, or judge, is above the law. We must abide by and follow the law as it is and not as we wish it were.

In their first four points of error, the appellants claim that the section of the Texas Penal Code upon which their

convictions are based is unconstitutionally overbroad and void for vagueness in violation of the United States and Texas Constitutions. Pre-trial motions to quash the informations were filed on this basis, and after a hearing, the trial court denied the motions. In reviewing the constitutionality of a statute, there is a presumption that the statute is valid and that the Legislature has not acted unreasonably or arbitrarily in enacting the law. *Ex parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978).

The Court of Criminal Appeals has held that the State has the right to regulate the use of city streets and other facilities to assure the safety and convenience of people in their use. *Haye v. State*, 634 S.W.2d 313, 315 (Tex. Crim. App. 1982), *citing inter alia, Cox v. Louisiana*, 379 U.S. 536. The statute "protects the right of the public to the reasonably convenient use of sidewalks and other passageways without encroachment upon the First Amendment rights of the individual." *Id.* Further, the Legislature has provided protection of first amendment expression through the enactment of TEX. PENAL CODE ANN. § 42.04. This statute provides, in pertinent part, as follows:

> (a) If conduct that would otherwise violate . . . Section 42.03 of this code consists of speech or other communication, . . . or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.
>
> (b) The order required by this section may be given by a peace officer, a fireman, a person

> with authority to control the use of the premises, or any person directly affected by the violation.
>
> (c) It is defense to prosecution under Section 42.01(a)(5) or 42.03 of this code:
>
> (1) that in circumstances in which this section requires an order no order was given;
>
> (2) that an order, if given, was manifestly unreasonable in scope; or
>
> (3) that an order, if given, was promptly obeyed.

"[A] statute is [only] considered impermissibly overbroad if, in addition to proscribing activities which may constitutionally be forbidden, it sweeps within its coverage speech or conduct which is protected by the first amendment." *Morehead v. State*, 746 S.W.2d 830, 833-34 (Tex. App. – Dallas 1988, pet.granted). The statute complained of regulates conduct, and not speech, and is not constitutionally overbroad. *Smith v. State*, 772 S.W.2d 946, 949 (Tex. App. – Dallas 1989, pet.ref'd)[.]

The appellants also complain that Section 42.03 is void for vagueness. In order for a penal statute to [be] unconstitutionally vague, "it must either forbid or require the doing of an act in terms so vague that people of common intelligence must necessarily guess as its meaning and differ as to its application, thereby violating the fair notice requirement of due process of law." *Morehead, supra at* 836-37. All of the complained of terms have common meanings, and "words defined in dictionaries and with meanings so well known as to be understood by a person of ordinary intelligence are not to be considered vague and indefinite." *Id.* Further, appellants have failed

to cite any authority for their proposition that the words are vague. The failure to cite authority specifically in support of their argument presents nothing for review. *MacDonald v. State*, 761 S.W.2d 56, 60 (Tex. App. – Houston [14th Dist.] 1988, pet.ref'd). Points of error one through four are overruled.

In points of error five through ten, the appellants contend that the trial court erred in admitting into evidence, over objection, the videotape of the offenses taken by the Houston Police. Appellants claim that the trial court erred in overruling their objection based upon the lack of a proper predicate for the video's admission. The seven-pronged predicate for the admission of sound recordings also applies to videotapes. *Edwards v. State*, 551 S.W.2d 731 (Tex. Crim. App. 1977). Each of the required elements were established either by direct proof or could be inferred from the testimony as allowed by *Edwards*. *See also Roy v. State*, 608 S.W.2d 645, 649 (Tex. Crim. App. 1980). Prior to the jury's viewing the tape, the court gave the following limiting instruction at the appellants' request:

> THE COURT: Ladies and gentlemen of the jury, I'm going to give you an instruction before you watch the video. I ask you not to consider the conversations of the other people that you see in the video – mainly, the other protestors – in passing on the guilty or innocence of these three defendants. I want you to keep that in mind.

Finally, the appellants' objection to a lack of predicate is a general objection and does not preserve error on appeal. *Beck v. State*, 719 S.W.2d 205, 214 (Tex. Crim. App. 1986).

Appellants further claim that the court erred in admitting the tape over the objections of relevancy and hearsay. The only objection made at the time the tape was offered into evidence was "lack of predicate", but prior to the tape's being offered, appellants had objected to relevancy and hearsay. The trial court never ruled on those objections. Absent an adverse ruling appearing in the record, no error is preserved for appeal. *Darty v. State*, 709 S.W.2d 652, 655 (Tex. Crim. App. 1986). Furthermore, appellants are complaining only about statements made by the police. Where a police officer's testimony is admitted, not for the truth, but to establish the course of events and circumstances leading to the arrest of appellants, it is not hearsay. *Stewart v. State*, 640 S.W.2d 643, 645 (Tex. App. – Houston [14th Dist.] 1982, no pet.). In their ninth point of error, appellants contend that the admission of the video violated their rights to confrontation and cross-examination of the police officer depicted on the tape since that officer did not testify. Appellants did not raise this objection until after the State had rested its case. The failure to object in a timely and specific manner waives error as to the admission of evidence, even though the error may concern a constitutional right of the appellants. *Little v. State*, 758 S.W.2d 551, 563 (Tex. Crim. App. 1988), *cert. denied*, 109 S.Ct. 328 (1988). Finally, appellants complain that the jury should not have been allowed to view the tape during deliberations. The jury had requested the tape as well as other exhibits, and it would have been error for the trial court not to comply with that request. See TEX. CODE CRIM. PROC. ANN. art. 36.235 (sic) [should be 36.25]; *Lopez v. State*, 628 S.W.2d 82, 85 (Tex. Crim. App. 1982). Points of error five through ten are overruled.

In points of error eleven and twelve, the appellants allege that the court erred in overruling their motions for a directed verdict. After the State had rested, appellants moved for a directed verdict based upon the lack of confrontation of a witness (the police officer in the video) and alleged that the State had failed to prove that the order to move from the clinic was issued to prevent an obstruction. The trial court denied the motions, and the appellants then went forward with their defense. After the State rests, where the defense moves for a directed verdict which is denied and then puts forth a defense, appellants cannot challenge the court's denial of the motion on appeal. Any error has been waived. *Kuykendall v. State*, 609 S.W.2d 791, 794 (Tex. Crim. App. 1980); *Springer v. State*, 721 S.W.2d 510, 512 (Tex. App. – Houston [14th Dist.] 1986, pet.ref'd). Appellants' points of error eleven and twelve are overruled.

Points of error thirteen through twenty-two assert that the trial court erred in refusing to allow the defenses of necessity and defense of third person. Appellants maintain that the evidence was admissible, contending that since the clinic was not licensed at the time of the protest, the clinic's activities were illegal. Although the trial court would not allow evidence on these "defenses", appellants were allowed to make formal bills of exception. Appellants premise their contentions concerning both justification defenses on the purported invalidity of *Roe v. Wade*, 410 U.S. 113 (1973). This is the United States Supreme Court decision concerning the privacy of a woman's decision on whether or not to abort her unborn child. This court must reject appellants' underlying challenge to *Roe*. *See Ex parte Aldridge*, 169 Tex.Cr. 395, 400,

334 S.W.2d 161, 164 (1959); *Brady v. Doe*, 598 S.W.2d 338 (Tex. Civ. App. – Houston [14th Dist.] 1980, (per curium), writ ref'd n.r.e.), *cert. denied*, 449 U.S. 1081 (1981). *Roe* is still the law and has not, as yet, been overruled or modified to support the appellants' position.

For an appellate court to reverse a conviction based upon excluded evidence, it must first conclude that because the proffered evidence was relevant, the trial court erred by excluding it. *See Bird v. State*, 692 S.W.2d 65, 73 (Tex. Crim. App.), *cert. denied*, 475 U.S. 1031 (1985). Only then may this court decide whether the appellants were harmed. *Id.*; TEX. R. APP. P. 81(b)(2). Because determination of the relevancy of evidence is a matter within the discretion of the trial court, appellants must also demonstrate that the trial court's exclusionary rulings amounted to an abuse of discretion. *See Johnson v. State*, 698 S.W.2d 154, 160 (Tex. Crim. App. 1985) (en banc), *cert. denied*, 479 U.S. 871 (1986); *Werner v. State*, 711 S.W.2d 639, 643 (Tex. Crim. App. 1986) (en banc); *Dominquez v. State*[,] 722 S.W.2d 179, 183 (Tex. App. – Houston [14th Dist.] 1986, no pet.). Evidence is relevant if it tends to render a contested material issue more or less probable. TEX. R. CRIM. EVID. 401; *Garza v. State*, 715 S.W.2d 642, 644 (Tex. Crim. App. 1986) (en banc).

Appellants preserved the question of the relevancy of this evidence in four separate bills of exception. The bills focus solely upon preventing the death of the unborn, and each appellant's personal convictions regarding abortion. There is no testimony concerning the welfare of the patient or the procedures performed at the clinic. A trial court does not err when it excludes evidence if the evidence fails to show that the accused is entitled to the

defense to which it applies. *Roy v. State*, 552 S.W.2d 827, 830-31 (Tex. Crim. App. 1977), *overruled on other grounds in*, (sic) *Johnson v. State*, 650 S.W.2d 414, 416 (Tex. Crim. App. 1983) (en banc); *Hoffart v. State*, 686 S.W.2d 259, 264 (Tex. App. – Houston [14th Dist.] 1985, pet.ref'd), *cert. denied*, 479 U.S. 824 (1986). To show they were entitled to the defenses asserted, appellants' bills of exception must demonstrate that they met all the elements of the defense. *Roy, supra* at 830.

TEX. PENAL CODE ANN. § 9.33 defines the defense for defending third persons. It states that a person is justified in using force or deadly force against another to protect a third person if:

> (1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 of this code in using force or deadly force to protect himself against the unlawful force or unlawfully deadly force he reasonably believes to be threatening the third person he seeks to protect; and
>
> (2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

Although the evidence does indicate that the clinic was not properly licensed at the time of the protest, there is no evidence that the appellants or the other protestors *knew* that the clinic was not properly licensed at the time of the occurrence in question. Because TEX. PENAL CODE ANN § 1.07(a)(27) defines "person" as "an individual, corporation, or association," while § 1.07(a)(17) defines "individual" as "a human being who has been born and is alive," an unborn child is not at the present time under Texas law a "person" for purposes of the defense of

defending third persons. *Bobo v. State*, 757 S.W.2d 58 (Tex. App. – Houston [14th Dist.] 1988, pet.ref'd), *cert. denied*, 109 S.Ct. 2066 (1989); *Ogas v. State*, 655 S.W.2d 322, 325 (Tex. App. – Amarillo 1983, no pet.). Defense of third persons is presently precluded in abortion cases in Texas. *Erlandson v. State*, 763 S.W.2d 845, 852 (Tex. App. – Houston [14th Dist.] 1988, pet.ref'd), *cert. denied*, 110 S.Ct. 152 (1989).

The defense of necessity requires a showing that:

> (1) The actor reasonably believes the conduct is immediately necessary to avoid imminent harm;
>
> (2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law prescribing the conduct; and
>
> (3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.
>
> TEX. PENAL CODE ANN. § 9.22.

Section 9.33 contemplates a case-by-case analysis in assessing competing harms. The harm the actor perceives and seeks to prevent must "clearly outweigh" the harm which will result from his acting in violation of another law. However, what the actor seeks to prevent must first be a legal harm. It is not so under the present status of Texas law. Despite appellants' assertions that the clinic was unlicensed, this condition does not effect the applicability of the defenses. Without specific authority, appellants present nothing for review. *MacDonald, supra.*

The controlling issue in this case was whether appellants obstructed a passageway. Although appellants maintain that their bills of exception raised evidence relevant to their prosecution, nothing in them make the State's allegations less probable. See TEX. R. CRIM. EVID. 401. The appellants' bills are irrelevant to the charges, and do not give rise to a fact issue that justified the appellant's (sic) obstruction. The trial court did not abuse its discretion by excluding the evidence. Because a determination of relevancy is the threshold question in any challenge to the exclusion of evidence, it is not necessary to decide whether the exclusion of this evidence harmed the appellants. *Bird, supra* at 73. Appellant's (sic) points of error thirteen through twenty-two are overruled.

In their twenty-third point of error, the appellants assert that the trial court erred in permitting the prosecutor to argue to the jury that appellants did not care what the law was and that they were going to break whatever laws they saw fit to further their cause. Appellants specifically point to three instances of alleged improper jury argument. Although objections were made on each occasion, no adverse rulings appear in the record, and absent an adverse ruling, there is no preservation of error. *Darty, supra; White v. State*, 681 S.W.2d 731 (Tex. App. – Houston [14th Dist.] 1984, pet.ref'd). Furthermore, the failure to request the court to instruct the jury to disregard the statements waived any error on appeal. There is a presumption that an instruction to disregard would have been obeyed by the jury thereby curing any error. *Waldo v. State*, 746 S.W.2d 750, 754 (Tex. Crim. App. 1988). Appellant's (sic) point of error twenty-three is overruled.

In point of error twenty-four, appellants contend that their jail sentences violate the protections against "cruel and unusual punishment". The statute under which the appellants were convicted in a Class B misdemeanor. *See* TEX. PENAL CODE ANN. § 42.03(c). An individual found guilty of a Class B misdemeanor shall be punished by a fine not to exceed $1000; confinement in jail for a term not to exceed 180 days; or both the fine and imprisonment. TEX. PENAL CODE ANN. § 12.22. The punishments assessed are within the statutory range of punishment. Where the punishment assessed is within the range prescribed by the statute, the punishment is not unconstitutionally cruel or unusual. *Harris v. State*, 656 S.W.2d 481, 486 (Tex. Crim. App. 1983) (en banc); *Hypke v. State*, 720 S.W.2d 158, 160 (Tex. App. – Houston [14th Dist.] 1986, pet.ref'd). Each appellant is currently on bond pending appeal. They lack standing to complain about the conditions in the Harris County Jail until they are in actual custody and can allege an "injury in fact". *Wilson v. State*, 692 S.W.2d 661, 667 (Tex. Crim. App. 1984) (Op. on reh'g). Appellants' point of error twenty-four is overruled.

In points of error twenty-five and twenty-six, appellants contend that the trial court erred in denying "Defendant's Motion to Quash Information No. 2". They claim that their charging instruments failed to provide sufficient certainty for double jeopardy purposes as required by TEX. CODE CRIM. PROC. ANN. art. 21.04. Appellants argue that the State was required to allege the locality of the occurrence within Harris County by giving a more detailed description of the "sidewalk, entrance, exit" where the offense were committed. The information is sufficient since it alleges the county in which the offense

was committed. Obstruction of a passageway is an offense against the owner's possession and control of the property, rather than an offense against the property itself. *See Reed v. State*, 762 S.W.2d 640 (Tex. App. – Texarkana 1988, pet.ref'd). Appellant's points of error twenty-five and twenty-six are overruled.

In their two final points of error, appellants contend that the trial court erred when it denied "Defendant's Motion to Quash Information No. 4" by each appellant because the informations failed to allege the manner or means of the obstruction sought to be prevented. The informations on which appellants were convicted read as follows:

> . . . intentionally and knowingly, without legal privilege and authority, disobey a reasonable request and order to move issued by J.C. LINNEY, a person the [Appellant] knew to be and was informed was a peace officer and a person with authority to control the use of the premises, to prevent obstruction of a sidewalk, an entrance and an exit to which the public or a substantial group of the public had access.

The offense is disobeying a reasonable request or order to move and not the means of obstruction. When an information tracks the language of the statute, as here, it is legally sufficient to provide an appellant with notice of the crime with which he is charged. *Smith, supra* at 952. The informations were sufficient, and the trial court did not err in denying the motions to quash. Appellant's twenty-seventh and twenty-eighth points of error are overruled.

The judgment of the trial court is affirmed.

/s/ Paul Pressler
Justice

Judgment rendered and Opinion filed June 28, 1990.
Panel consists of Justices Pressler, Cannon, and Ellis.
Publish – TEX. R. APP. P. 90.

JUNE 28, 1990

(SEAL)

JUDGMENT

The Fourteenth Court of Appeals

MICHAEL SCOTT AMERSON, Appellant

No. B14-89-00830-CR V.

THE STATE OF TEXAS, Appellee

This cause came on to be heard on the transcript of the record of the court below. The same being considered, it is the opinion of this Court that there was no error in the judgment. It is ordered by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

JUNE 28, 1990

(SEAL)

JUDGMENT

The Fourteenth Court of Appeals

JAMES CLIFFORD HORAN, Appellant

No. A14-89-00829-CR V.

THE STATE OF TEXAS, Appellee

This cause came on to be heard on the transcript of the record of the court below. The same being considered, it is the opinion of this Court that there was no error in the judgment. It is ordered by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

JUNE 28, 1990

(SEAL)

JUDGMENT

The Fourteenth Court of Appeals

CHARLES DALE REED, Appellant

No. C14-89-00828-CR V.

THE STATE OF TEXAS, Appellee

This cause came on to be heard on the transcript of the record of the court below. The same being considered, it is the opinion of this Court that there was no error in the judgment. It is ordered by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

Fourteenth Court of Appeals
1307 San Jacinto, 11th Floor
Houston, Texas 77002

J. CURTISS BROWN
CHIEF JUSTICE

PAUL PRESSLER
WILLIAM E. JUNELL
PAUL C. MURPHY
SAM ROBERTSON
ROSS A. SEARS
BILL CANNON
JOE L. DRAUGHN
GEORGE T. ELLIS

JUSTICES

MARY JANE SMART
CLERK

HELEN A. CASSIDY
CHIEF STAFF ATTORNEY

PHONE
713-655-2800

September 6, 1990

Hon. Richard W. Schmude
P.O. Box 674
Tomball, TX 77375

Hon. Roger A. Haseman
Assistant District Attorney
201 Fannin
Suite 200
Houston, TX 77002

RE: CASE NO. 14-89-00830-CR

TRIAL COURT CASE NO. 891,6763

STYLE: Amerson, Michael Scott V: The State of Texas

Counsel:

Please be advised that on this date, the Court OVERRULED appellant's(s') motion for rehearing in the above cause.

MARY JANE SMART, CLERK

By /s/ Charlene Mitchell
Deputy

County Criminal Court at Law No. 5
301 San Jacinto
2nd Floor
Houston, TX 77002

Hon. Ray Hardy
District Clerk, Harris County
Attention: Criminal Division
P.O. Box 4651
Houston, TX 77210

Fourteenth Court of Appeals
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J. CURTISS BROWN
CHIEF JUSTICE

PAUL PRESSLER
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JUSTICES

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September 6, 1990

Hon. Richard W. Schmude
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Hon. Roger A. Haseman
Assistant District Attorney
201 Fannin
Suite 200
Houston, TX 77002

RE: CASE NO. 14-89-00829-CR

TRIAL COURT CASE NO. 891,6761

STYLE: Horan, James Clifford V: The State of Texas

Counsel:

Please be advised that on this date, the Court OVERRULED appellant's(s') motion for rehearing in the above cause.

MARY JANE SMART, CLERK

By /s/ Charlene Mitchell
Deputy

County Criminal Court at Law No. 5
301 San Jacinto
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Houston, TX 77002

Hon. Ray Hardy
District Clerk, Harris County
Attention: Criminal Division
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Fourteenth Court of Appeals
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J. CURTISS BROWN
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PAUL PRESSLER
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JUSTICES

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September 6, 1990

Hon. Richard W. Schmude
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Hon. Roger A. Haseman
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Suite 200
Houston, TX 77002

RE: CASE NO. 14-89-00828-CR

TRIAL COURT CASE NO. 891,6760

STYLE: Reed, Charles Dale V: The State of Texas

Counsel:

Please be advised that on this date, the Court OVERRULED appellant's(s') motion for rehearing in the above cause.

MARY JANE SMART, CLERK

By /s/ Charlene Mitchell
Deputy

County Criminal Court at Law No. 5
301 San Jacinto
2nd Floor
Houston, TX 77002

Hon. Ray Hardy
District Clerk, Harris County
Attention: Criminal Division
P.O. Box 4651
Houston, TX 77210

January 16, 1991
COA#: 14-89-00830-CR

(SEAL) (INK STAMP) OFFICIAL NOTICE
COURT OF CRIMINAL
APPEALS (POSTMARK and POSTAGE)

RE: Case No. 1063-90
STYLE: AMERSON, MICHAEL SCOTT

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

JUDGE MALONEY WOULD GRANT ON NO. 1.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO: RICHARD W. SCHMUDE
P.O. BOX 674
TOMBALL, TX 77375

January 16, 1991
COA#: 14-89-00829-CR

(SEAL) (INK STAMP) OFFICIAL NOTICE
COURT OF CRIMINAL
APPEALS (POSTMARK and POSTAGE)

RE: Case No. 1062-90
STYLE: HORAN, JAMES CLIFFORD

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

JUDGE MALONEY WOULD GRANT ON NO. 1.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO: RICHARD W. SCHMUDE
P.O. BOX 674
TOMBALL, TX 77375

January 10, 1991
COA#: 14-89-00828-CR

(SEAL) (INK STAMP) OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS

(POSTMARK and POSTAGE)

RE: Case No. 1061-90
STYLE: REED, CHARLES DALE

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

JUDGE MALONEY WOULD GRANT ON NO. 1.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO: RICHARD W. SCHMUDE
P.O. BOX 674
TOMBALL, TX 77375

January 24, 1991
COA#: 14-89-00830-CR

(SEAL) (INK STAMP) OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS (POSTMARK and POSTAGE)

RE: Case No. 1063-90
STYLE: AMERSON, MICHAEL SCOTT

The Court has this day rejected the appellant's motion for rehearing for failure to comply with Rule 230(b) T.R.A.P.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

MAIL TO: RICHARD W. SCHMUDE
P.O. BOX 674
TOMBALL, TX 77375

January 24, 1991
COA#: 14-89-00829-CR

(SEAL) (INK STAMP) OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS (POSTMARK and POSTAGE)

RE: Case No. 1062-90
STYLE: HORAN, JAMES CLIFFORD

The Court has this day rejected the appellant's motion for rehearing for failure to comply with Rule 230(b) T.R.A.P.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS
P.O. BOX 12308, CAPITAL STATION
AUSTIN, TEXAS 78711

RICHARD W. SCHMUDE
MAIL TO: P.O. BOX 674
TOMBALL, TX 77375

January 24, 1991
COA#: 14-89-00828-CR

(SEAL) (INK STAMP) OFFICIAL NOTICE
COURT OF CRIMINAL
APPEALS (POSTMARK and POSTAGE)

RE: Case No. 1061-90
STYLE: REED, CHARLES DALE

The Court has this day rejected the appellant's motion for rehearing for failure to comply with Rule 230(b) T.R.A.P.

Thomas Lowe, Clerk

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